

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

Day 38 - Trial with Jury
Before the Honorable Beverly Cannone

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	REXCROSS
(None)				

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P R O C E E D I N G SJune 26, 2024

(Court in session at 9:12 a.m.)

(Defendant present. Jury present.)

THE CLERK: 22-117, the Commonwealth versus
Karen Read.

THE COURT: All right. Good morning, counsel.
Good morning, Ms. Read. Good morning, jurors.

So I have to ask you all, including the
alternates, three questions: Were you all able to
follow the instructions and refrain from discussing
this case with anyone since we left the courtroom
yesterday?

Everyone said "yes" or nodded affirmatively.

Were you also able to follow the instructions
and refrain from doing an independent research or
investigation into this case?

Everyone said "yes" or nodded affirmatively.

Did anyone happen to see, hear or read
anything about this case since we left here
yesterday?

Everyone said "no" or shook their heads.

All right. With that, we'll send you back out
to deliberate. Thank you.

(Whereupon, the jury exited the courtroom to resume

1 deliberations at 9:13 a.m.)

2 THE COURT: All right. So, counsel, I don't
3 want the jury to have to wait for us for anything
4 today. So you are to stay in the building until
5 10. I need you back here for the afternoon no
6 later than 3:30. You will be free to leave during
7 the day as long as you can definitely be in here,
8 in your seats, ready to go on five minutes notice.
9 Okay? So we'll see you then.

10 (Whereupon, there was a brief recess taken at
11 9:14 a.m.)

12 (Court resumes at 9:29 a.m.)

13 (Defendant present. Jury not present.)

14 THE CLERK: Judge, we are back on the record
15 on 22-117. I believe we have a question from the
16 jury.

17 THE COURT: Yes. It is simply, "Good morning.
18 The jury is kindly requesting to conclude
19 deliberations in time to board the bus at 4:00 p.m.
20 A juror has a long-existing scheduling conflict."

21 So I'm just going to simply say yes and send
22 it back.

23 MR. JACKSON: No objection.

24 MR. LALLY: That's fine, Your Honor.

25 THE COURT: Could you mark this, please?

1 THE COURT REPORTER: Sure. That would be
2 "PPP" for Identification.

3 THE COURT: Thank you.
4 (Whereupon, communication from the jury was entered
5 and marked Exhibit "PPP" for Identification.)

6 THE COURT: All right. We will send it back
7 in with you, Officer Delano. All set.
8 (Whereupon, there was a brief recess taken at
9 9:30 a.m.)

10 (Court resumes at 10:02 a.m.)

11 (Defendant present. Jury not present.)

12 THE CLERK: 22-117.

13 THE COURT: So why are we out here?

14 MR. JACKSON: Your Honor, I just saw the
15 verdict forms and, as we discussed yesterday, the
16 amendments that the Court indicated it would make
17 on the verdict forms have not been made.

18 THE COURT: Oh, no, no, no. Okay. I did not
19 say I'd make it. I said I would think about it. I
20 said I was tired and I needed to think about it.

21 MR. JACKSON: Well, what you said before you
22 were tired and you needed to think about it was you
23 agreed that there needs to be not guilty options
24 for the subordinate charges under Count 2.

25 THE COURT: I said that it made sense to me.

1 But no. I did not change it upon looking at it
2 because the verdict slip, this verdict slip as
3 submitted to the jury, is exactly how it always is
4 in Massachusetts.

5 MR. JACKSON: Well, can I ask you a question,
6 then? I don't really care how it always in is
7 Massachusetts. I care about whether or not it is
8 appropriate.

9 THE COURT: It's appropriate.

10 MR. JACKSON: Those are two different things.

11 THE COURT: It's appropriate.

12 MR. JACKSON: Let me make my argument, if you
13 wouldn't mind, Judge, why it's not appropriate.

14 For a superior charge, they have to decide
15 that she is not guilty of the superior charge, and
16 that is the starting point of whether or not she is
17 guilty or not guilty of any subordinate charge,
18 often called a lesser included.

19 Once they decide that she's not guilty of the
20 superior charge, now there's two additional charges
21 that they've been instructed they must decide
22 whether she's guilty or not guilty of. How do they
23 decide that she's not guilty of the first
24 subordinate charge, involuntary manslaughter?

25 THE COURT: Anything else you want to say,

1 Mr. Jackson?

2 MR. JACKSON: I'd like an answer from the
3 Court. How do they decide that she's to guilty of
4 involuntary manslaughter on that verdict form?

5 THE COURT: That's their decision to make.

6 MR. JACKSON: And how do they make it if they
7 don't have an option to check a box that says "not
8 guilty"? I don't --

9 THE COURT: They don't check the box that says
10 "guilty," do they? And then when they go to the
11 next block, they don't check the block that says
12 "guilty." And, on the top, you're left with not
13 guilty. Okay?

14 MR. JACKSON: So it's the absence of the check
15 mark that the Court determines is the not guilty
16 finding by the jury?

17 THE COURT: Yes. That's what the verdict slip
18 reads. It reads "not guilty." If they don't check
19 Block 2, 3 or 4, the verdict slip reads "not
20 guilty." Okay?

21 MR. JACKSON: That is --

22 THE COURT: That's how it is, Mr. Jackson.

23 MR. JACKSON: Well, apparently that's how it's
24 going to be because Court's ordered it. But that's
25 not how it should be, and it's over our strong

1 objection. They need to see that there is a not
2 guilty option for the subordinate charges. If they
3 come back guilty on, for instance, involuntary
4 manslaughter, that's immediately appealable. They
5 didn't have an option on the verdict form to find
6 her not guilty. It's almost like the Court is
7 directing a verdict of the subordinate charges.

8 THE COURT: I disagree with you.

9 Mr. Yannetti, you've seen verdict slips
10 exactly like this?

11 MR. YANNETTI: I actually haven't, Your Honor.

12 THE COURT: You've had no lesser included?

13 MR. YANNETTI: No. We've always had lesser
14 included, but I have not seen a verdict slip there
15 where not guilty is not an option for a lesser
16 included.

17 THE COURT: I disagree.

18 MR. JACKSON: And I don't see the --

19 THE COURT: Excuse me? This is funny,
20 Ms. Read?

21 All right. We're done.

22 (Whereupon, a brief recess is taken.)

23 (Court resumes at 11:49 a.m.)

24 (Defendant present. Jury not present.)

25 THE COURT OFFICER: Court is back in session.

1 You may be seated.

2 (Whereupon, jury communication was entered and
3 marked "QQQ" for Identification.)

4 THE CLERK: Judge, we have a question from the
5 jury. It's been marked "QQQ" for Identification.

6 THE COURT: Okay. The question, "Can we
7 request the SERT report detailing the search
8 performed?"

9 So they can request it, but they can't get it.
10 So I'm just going to say, you have all of the
11 evidence in this case.

12 We will figure that out. I'll get some
13 language from you.

14 But, Mr. Jackson, after our hearing this
15 morning, I considered what you said. I went back
16 and I read the jury instructions I gave yesterday.
17 So I do appreciate the concern about the confusion
18 this might cause the jury. I think it is easily
19 clarified with a supplemental instruction. I don't
20 think it's the verdict slip. I think it's how they
21 are to follow the verdict slip.

22 So what I've written up, this is a very rough
23 draft. I'll read it to you. I'll take a break and
24 let you consider it if you want, but this works out
25 -- I received this about 15 minutes ago, the letter

1 -- the question from the jury, so it seems a good
2 time. So I was working on this. It seems a good
3 time to bring them in for an answer to the
4 question.

5 And I would say, "As long as I have you here,
6 I want to clarify my instructions regarding your
7 verdict as to Count 2 of the indictment.

8 "As I instructed you yesterday, there are two
9 lesser offenses of that crime which are involuntary
10 manslaughter and motor vehicle homicide, felony,
11 OUI liquor and negligence. Therefore, Count 2
12 encompasses three separate charges, the most
13 serious of which is manslaughter while operating a
14 motor vehicle under the influence of liquor.

15 "In considering Count 2, you should first
16 focus on the crime of manslaughter while operating
17 a motor vehicle under the influence of liquor and,
18 if the Commonwealth has failed to prove that crime
19 beyond a reasonable doubt, then you are to consider
20 the remaining lesser included offenses in
21 descending order.

22 "The lead charge is manslaughter while
23 operating a motor vehicle under the influence of
24 liquor. If you find that the Commonwealth has
25 proved all five elements, proven all five elements

1 of this charge beyond a reasonable doubt, then your
2 verdict shall be guilty of manslaughter while
3 operating a motor vehicle under the influence of
4 liquor.

5 "If, however, you find that the Commonwealth
6 has not proven all five elements of manslaughter
7 while operating a motor vehicle under the influence
8 of liquor, then you are to consider whether the
9 Commonwealth has proven beyond a reasonable doubt
10 the three elements of the lesser included offense
11 of involuntary manslaughter.

12 "If the Commonwealth has proven the three
13 elements of involuntary manslaughter, then your
14 verdict shall be guilty on the lesser included
15 offense of involuntary manslaughter. If, however,
16 you find the Commonwealth has failed to prove
17 beyond a reasonable doubt the crime of manslaughter
18 while operating a motor vehicle under the influence
19 of liquor and the lesser included offense of
20 involuntary manslaughter, then you are to consider
21 whether the Commonwealth has proven beyond a
22 reasonable doubt the five elements of motor vehicle
23 homicide, felony, OUI, liquor and negligence.

24 "If the Commonwealth has proven beyond a
25 reasonable doubt the five elements of motor vehicle

1 homicide, then your verdict shall be guilty of the
2 lesser included offense of motor vehicle homicide,
3 OUI, liquor and negligence. If, however, the
4 Commonwealth has failed to prove beyond a
5 reasonable doubt all elements of manslaughter while
6 operating a motor vehicle under the influence of
7 liquor and has failed to prove all of the elements
8 of the lesser included offenses of involuntary
9 manslaughter or motor vehicle homicide, felony,
10 OUI, liquor and negligence, then your verdict must
11 be not guilty to Count 2.

12 MR. JACKSON: May I have just a moment?

13 THE COURT: Yes.

14 (Whereupon, there was a brief pause.)

15 MR. JACKSON: Thank you, Your Honor. May I be
16 heard?

17 THE COURT: Yes.

18 MR. JACKSON: I deeply appreciate the Court's
19 additional clarifying language. I would simply ask
20 for one very simple amendment; and, that is, at the
21 top of the verdict slip, it says the two words "not
22 guilty." We would ask that the verdict slip read,
23 "Not guilty of the offense charged or any lesser
24 included offense."

25 That's it. And I think that and the Court's

1 clarifying instruction would satisfy the defense.
2 Not I think. I know it will. That's all we ask.
3 And I can repeat that if the Court wishes.

4 THE COURT: So there are some like minor
5 changes we have to make to the verdict slip anyway.
6 It has to be consistent. So the manslaughter while
7 operating a motor vehicle under the influence, the
8 tab needs to -- actually, Tori -- so there needs to
9 be some physical changes in the verdict slip
10 anyway. It needs to be indented. There needs to
11 be a colon after "guilty of offense charged." It's
12 not complete. It doesn't have "under the influence
13 of liquor." It just says "under the influence."
14 So there are some minor changes that need to be
15 made to the verdict slip.

16 Does the Commonwealth oppose the suggestion
17 made by Mr. Jackson which seems like a reasonable
18 one?

19 MR. LALLY: No, Your Honor.

20 THE COURT: All right. So it will be not
21 guilty -- so tell me again how you want it?

22 MR. JACKSON: Sure. "Not guilty of the
23 offense charged or any lesser included offense."

24 THE COURT: I think the clarifying language
25 that I proposed is important.

1 MR. JACKSON: I do too, and I appreciate that.
2 I think with that amendment to the slip and the
3 clarifying language, I think coupling those up is
4 exactly what the defense was asking for, and I
5 appreciate that.

6 THE COURT: So I need to -- I'd like to send
7 in a written copy of what I just read. There are a
8 couple of things bolded. I need to fix this up a
9 little bit. It was just done quickly.

10 MR. JACKSON: Okay.

11 THE COURT: The jury has been waiting. Why
12 don't we bring them in and I will tell them that a
13 new verdict slip will be in.

14 MR. JACKSON: Thank you, Your Honor.

15 THE COURT: I do, though, have to make a
16 finding that the verdict slip as is was proper.
17 All right. So we will just leave it at that. I
18 will read the amendment that you wanted. That is
19 my fault.

20 MR. JACKSON: Thank you, Your Honor. Just
21 from a logistics standpoint, once the new verdict
22 slip is prepared and ready --

23 THE COURT: We all need to see it.

24 MR. JACKSON: I was just going to ask. Can we
25 have that emailed to us or something?

1 THE COURT: Yes. We all need to see it. I
2 will work -- all right. Bring the jurors in,
3 please.

4 I'm sorry. Suggested language on the SERT
5 report?

6 MR. JACKSON: I'm sorry, Judge?

7 THE COURT: Any suggested language on their
8 question?

9 MR. JACKSON: No. I think the Court's
10 correct, that in terms of the SERT report request,
11 the Court's answer is right on point, which is you
12 are directed to review the evidence that is in
13 front of you and that's it, or however you --

14 THE COURT: I am just going to say, you have
15 all the evidence in this case.

16 MR. JACKSON: Yes. Yes. I was stumbling.
17 (Whereupon, the jury enters the courtroom at
18 11:58 a.m.)

19 THE COURT: All right. So, jurors, we are in
20 receipt of your question, "Can we request the SERT
21 report detailing the search performed?"

22 I take this as a request, and the answer is
23 that you folks, you have all the evidence in the
24 case. So what you have is the evidence in this
25 case. You won't be receiving any additional

1 evidence. But, as long as I have you here, I want
2 to clarify my instructions regarding your verdict
3 as to Count 2 of the Indictment.

4 As I instructed you yesterday, there are two
5 lesser offenses of that crime which are involuntary
6 manslaughter and motor vehicle homicide, felony,
7 OUI, liquor and negligence.

8 Therefore, Count 2 encompasses three separate
9 charges, the most serious of which is manslaughter
10 while operating a vehicle under the influence of
11 liquor.

12 In considering Count 2, you should first focus
13 on the crime of manslaughter while operating a
14 motor vehicle under the influence of liquor and, if
15 the Commonwealth has failed to prove that crime
16 beyond a reasonable doubt, then you are to consider
17 the remaining lesser included offenses in
18 descending order. So the lead charge is
19 manslaughter while operating a motor vehicle under
20 the influence of liquor.

21 If you find that the Commonwealth has proven
22 all five elements of this charge beyond a
23 reasonable doubt, then your verdict shall be guilty
24 of manslaughter while operating a motor vehicle
25 under the influence of liquor.

1 If, however, you find that the Commonwealth
2 has not proven all five elements of manslaughter
3 while operating a motor vehicle under the influence
4 of liquor, then you are to consider whether the
5 Commonwealth has proven beyond a reasonable doubt
6 the three elements of the lesser included offense
7 of involuntary manslaughter.

8 If the Commonwealth has proven the three
9 elements of involuntary manslaughter, then your
10 verdict shall be guilty on the lesser included
11 offense of involuntary manslaughter.

12 If, however, you find the Commonwealth has
13 failed to prove beyond a reasonable doubt the crime
14 of manslaughter while operating a motor vehicle
15 under the influence of liquor and the lesser
16 included offense of involuntary manslaughter, then
17 you are to consider whether the Commonwealth has
18 proven beyond a reasonable doubt the five elements
19 of motor vehicle homicide, felony, OUI, liquor and
20 negligence.

21 If the Commonwealth has proven beyond a
22 reasonable doubt the five elements of motor vehicle
23 homicide, then your verdict shall be guilty of the
24 lesser included offense of motor vehicle homicide,
25 OUI, liquor and negligence.

1 If, however, the Commonwealth has failed to
2 prove beyond a reasonable doubt all the elements of
3 manslaughter while operating a motor vehicle under
4 the influence of liquor and has failed to prove all
5 the elements of the lesser included offenses of
6 involuntary manslaughter or motor vehicle homicide,
7 felony, OUI, liquor and negligence, then your
8 verdict must be not guilty to Count 2.

9 So I am going to send in a new verdict slip on
10 Count 2. It's just a little bit different and we
11 have to sort of change the -- we have to indent
12 something and change the spacing a little bit to
13 make it a little bit clearer for you. Okay?

14 So we will get that in to you in the next 10
15 minutes. All right? Thank you all very much.

16 (Whereupon, the jury exits the courtroom to resume
17 deliberations at 12:02 p.m., and a brief recess is
18 taken.)

19 (Court resumes at 12:45 p.m.)

20 (Defendant present. Jury not present.)

21 THE COURT OFFICER: Court is back in session.
22 You may be seated.

23 THE CLERK: Judge, we are back on the record
24 in 22-117. Counsel have both had an opportunity to
25 look at the new verdict slip.

1 THE COURT: All right. So does the defense
2 say the verdict slip is in order?

3 MR. JACKSON: It is, Your Honor. Thank you,
4 and we appreciate the Court.

5 THE COURT: Okay. Does the Commonwealth say
6 the verdict slip is in order?

7 MR. LALLY: Yes, Your Honor.

8 THE COURT: All right. So the verdict slip
9 will go in. Officer Delano, I'll let you do what
10 you do.

11 So the verdict slip will go in to the jury and
12 I instruct you or Officer Lydon to remove the
13 verdict slip for Count No. 2 from the jury. Have
14 the jurors fold it, put it in an envelope and seal
15 it. And we will bring that in and we will mark
16 that for identification.

17 I am also going to send in a transcript of the
18 supplemental instruction I gave this morning. May
19 we mark that, Madam Court Reporter, please?

20 THE COURT REPORTER: Yes, Your Honor. That is
21 "RRR" for Identification.

22 (Whereupon, additional written jury charge was
23 entered and marked Exhibit "RRR" for
24 Identification.)

25 THE COURT: I have copies for counsel.

1 MR. JACKSON: May I approach?

2 THE COURT: Yes. All right. So with that, we
3 will be in recess. And you'll remember that the
4 jurors were instructed that we won't take any
5 questions or verdict from 1:00 o'clock to 2:00
6 o'clock.

7 MR. JACKSON: I missed that last part, Judge.

8 THE COURT: The jurors were instructed in the
9 instructions I gave yesterday that we will not take
10 a verdict or a question from one to two.

11 MR. JACKSON: Understood.

12 THE COURT: So everybody is free.

13 MR. LALLY: Thank you.

14 MR. JACKSON: Thank you, Your Honor.

15 THE COURT REPORTER: "S" for identification is
16 the initial verdict slip on Count 2 in a sealed
17 envelope brought by Officer Paul Delano.

18 To correct the record, it is marked "SSS" for
19 Identification.

20 (Whereupon, initial verdict slip for Count 2 in
21 sealed envelope was entered and marked Exhibit
22 "SSS" for Identification.)

23 (Whereupon, there was a luncheon recess taken at
24 12:55 p.m.)

25

A F T E R N O O N S E S S I O N

(Court resumes at 3:35 p.m.)

(Defendant present. Jury not present.)

THE COURT OFFICER: Court is back in session.
You may be seated.

THE COURT: So the jurors have indicated they
want to go home.

THE COURT REPORTER: This will be "TTT" for
Identification.

(Whereupon, communication from the jury was entered
and marked Exhibit "TTT" for Identification, and
the jury entered the courtroom at 3:38 p.m.)

THE COURT: All right, jurors. You've been
working hard today. I understand you want to go
home. So we will suspend for the day and we will
see you tomorrow morning, ready to start right at
nine.

So please follow those same three
instructions. Do not discuss this case with
anyone. Don't do any independent research or
investigation into this case. If you happen to
see, hear or read anything about this case, please
disregard it. Put the whole case out of your mind
until tomorrow. We will see you tomorrow morning.
Thank you.

1 (Whereupon, the jury exited the courtroom.)

2 THE COURT: All right. We will see you
3 tomorrow.

4 (Whereupon, the Court adjourned.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 38-3 to 38-22, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 9th day of June, 2024.

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist